

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
	)	
<b>SHERMAN-DIXIE CONCRETE</b>	)	
<b>INDUSTRIES, INC.</b>	)	
	)	
<b>RESPONDENT</b>	)	<b>CASE NO. WPC07-0173</b>

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**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the "division") by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

**II.**

Sherman-Dixie Concrete Industries, Inc. (hereinafter the "Respondent") operates an industrial facility in Davidson County at 3641 Central Pike, Hermitage, Tennessee, 37076 (hereinafter the "site"). Service of process may be made on the Respondent through, William T. Delay, at 200 42<sup>nd</sup> Avenue N., Nashville, Tennessee, 35203.

## **JURISDICTION**

### **III.**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (“Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director of the Division of Water Pollution Control any of the powers, duties, and responsibilities of the commissioner under the Act.

### **IV.**

The Respondent is a “person” as defined at T.C.A. §69-3-103(20), and as hereinafter stated, the Respondent has violated the Act.

### **V.**

T.C.A. § 69-3-108 requires a person to obtain coverage under permit prior to discharging any substance to waters of the state, or to a location from which it is likely that the discharged substance will move into waters. Coverage under the Tennessee

Multi-Sector Permit for Storm Water Discharges Associated with Industrial Activity (hereinafter the “TMSP”) may be obtained by submittal of a Notice of Intent (NOI).

## **VI.**

Stoners Creek and its unnamed tributary, referred to herein, is “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications for Surface Waters, et al,” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, the unnamed tributary to Friar Branch has been classified for the following uses: fish and aquatic life, livestock watering and wildlife, recreation, and irrigation.

## **FACTS**

## **VII.**

On August 18, 1997, the Respondent applied to the division for coverage under the TMSP for storm water discharges associated with industrial activity. On January 14, 1998, the Respondent was issued coverage and assigned tracking number TNR053492. The permit authorizes discharge of storm water associated with industrial activity from the site to an unnamed tributary of Stoners Creek. The coverage became effective on March 1, 1997 and expired on December 31, 2001.

## **VIII.**

On February 9, 2001, the Respondent submitted a no exposure certification. Industrial facilities are allowed to submit no exposure certification in lieu of obtaining or maintaining a NPDES permit. A no exposure certification is a conditional exclusion applicable to all industrial activity with no exposure of industrial materials and activities to storm water.

## **IX.**

On September 27, 2006, division personnel conducted a complaint investigation at the site. An alleged discharge of a milky white water into Stoners Creek was part of the complaint. During the site visit, personnel noted the existence of a metal corrugated discharge pipe from the site to Stoners Creek. Flow was not observed from the discharge pipe. Additionally, exposed materials were present on site that would potentially cause a condition of pollution during a stormwater event. Items stored on the site that could potentially cause a condition of pollution include but are not limited to: manhole structures, waste concrete stockpiles, and dust from plant operations.

## **X.**

On October 20, 2006, division personnel conducted a complaint investigation at the site. During the course of the investigation, personnel noted intermittent flow from the previously referenced discharge pipe into Stoners Creek.

## **XI.**

The Metro Nashville Stormwater Program conducted a site visit and issued a Notice of Violation (NOV) to the Respondent on January 5, 2007. The violation cited the Respondent for illicit discharge of sediment-laden stormwater. The NOV required the Respondent to submit written planning of corrective measures to the department within 10 working days, January 19, 2007. In addition, the NOV required implementation of the corrective measures within 60 days, March 5, 2007.

## **XII.**

On January 18, 2007, the division sent a NOV to the Respondent concerning the findings of the site visit conducted by the Metro Nashville Stormwater Program on January 5, 2007. The Respondent failed to obtain permit coverage for discharge into waters of the state. Erosion Prevention and Sediment Control (EPSC) measures were inadequate and improperly maintained. The NOV required the Respondent to immediately install effective EPSC measures, submit a Notice of Intent (NOI), and to complete a Storm Water Pollution Prevention Plan (SWPPP), no later than 15 days after receipt of the NOV.

### **XIII.**

On January 29, 2007, the Respondent sent a response letter to the division. In the letter the Respondent stated that preliminary efforts were underway to minimize the impact of stormwater discharge. The Respondent had retained an engineering company to assist in preparation of a SWPPP and NOI. Furthermore, the Respondent asked for a deadline extension of SWPPP and NOI documentation submission of March 24, 2007.

### **XIV.**

Division personnel performed a follow-up inspection on February 27, 2007. Non-stormwater flows were observed entering the sites two-stormwater catch basins. The non-stormwater flows were also observed discharging directly into Stoners Creek from a corrugated metal pipe.

### **XV.**

On March 26, 2007, the division received a SWPPP and NOI from the Respondent.

### **XVI.**

On March 28, 2007, division personnel conducted a second follow-up inspection. Division personnel noted that existing EPSC measures were improperly maintained. The inspection was conducted during a rain event, and it was observed that stormwater flows were entering the site's catch basins. In addition, a white milky discharge from the respondent's outfall entered Stoners Creek.

## **XVII.**

On June 11, 2007, the division issued the Respondent coverage under the Tennessee Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, under the tracking number (TNR053492).

## **XVIII.**

During the course of investigating this matter, the division incurred damages in the amount of FOUR HUNDRED EIGHTY FOUR DOLLARS AND TEN CENTS (\$484.10).

## **VIOLATIONS**

## **XIX.**

By failing to obtain permit coverage for the site, as described herein, the Respondent has violated T.C.A. Sections 69-3-108(a)-(b) and 69-3-114(b), which states

Section 69-3-108:

- (a) Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.
- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:]

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;

Section 69-3-114(b)-In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

## XX.

By discharging materials or wastewater without authorization under a permit, the Respondent has violated T.C.A. Sections 69-3-108(a), as referenced above, and 69-3-114(a), which states:

Section 69-3-114(a):

It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.



## **ORDER AND ASSESSMENT**

### **XXI.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. The Respondent shall, within 30 days of receipt of this ORDER and ASSESSMENT identify all outfalls associated with discharge from their facility. This includes the termination point of the piping inlet at the northwestern corner of the property.
2. The Respondent shall, within 30 days of receipt of this ORDER and ASSESSMENT, submit to the division, a corrective action plan to remove sediment from Stoners Creek. The plan shall include, but not be limited to, the methods to be used during sediment removal activities and a schedule of implementation for the proposed activities. The plan shall be submitted to the Environmental Field Office in Nashville (N-EFO), located at 711 R.S. Gass Blvd, Nashville, Tennessee 37243. A copy shall also be submitted to the manager of the division's Enforcement and Compliance Section, located at 401 Church Street, L&C Annex 6<sup>th</sup> Floor, Nashville, Tennessee 37243.
3. The Respondent shall, within 60 days of receipt of this ORDER and ASSESSMENT, complete the activities outlined in the approved corrective action plan and notify the manager of the division's N-EFO upon completion.

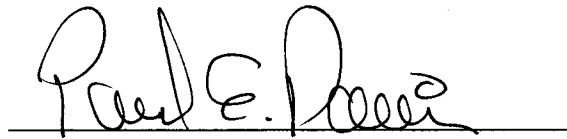
4. In the event that the Respondent identifies their outfall as the aforementioned corrugated pipe that discharges into Stoners Creek, the Respondent shall, within 45 days of receipt of this ORDER and ASSESSMENT, submit to the division a NOI for a General NPDES Permit for Discharges of Storm Water Runoff and Process Wastewater Associated with Ready Mixed Concrete Facilities.
5. The Respondent is hereby assessed a CIVIL PENALTY in the amount of TWENTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$27,500.00), payable as follows:
  - a. The Respondent shall pay a CIVIL PENALTY to the Department, hereby assessed, of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00) to be paid to the division within THIRTY (30) DAYS of receipt of this Order and Assessment.
  - b. The Respondent shall pay a CIVIL PENALTY to the Department, hereby assessed, of SEVEN THOUSAND DOLLARS (\$7,000.00) to be paid to the division within THIRTY (30) DAYS of default if, and only if, the Respondent fails to comply with Item 1 above in a timely manner.
  - c. The Respondent shall pay a CIVIL PENALTY to the Department, hereby assessed, of SEVEN THOUSAND DOLLARS (\$7,000.00) to be paid to the division within THIRTY (30) DAYS of default if, and only if, the Respondent fails to comply with Item 2 above in a timely manner.
  - d. The Respondent shall pay a CIVIL PENALTY to the Department, hereby assessed, of SIX THOUSAND DOLLARS (\$6,000.00) to be paid to the

division within THIRTY (30) DAYS of default if, and only if, the Respondent fails to comply with Item 3 above in a timely manner.

6. The Respondent is hereby assessed DAMAGES in the amount of FOUR HUNDRED EIGHTY FOUR DOLLARS AND TEN CENTS (\$ 484.10) payable within THIRTY (30) DAYS of receipt of this ORDER and ASSESSMENT.
7. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of law or regulations. However, compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 21<sup>st</sup> day of September 2007.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

PAUL E. DAVIS

Director, Division of Water Pollution Control

### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within THIRTY (30) DAYS of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3-115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence

at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the “Treasurer, State of Tennessee,” and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.